Nexstar
BROADCASTING GROUP INC

January 24, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Written Ex Parte Presentation
MB Docket No. 09-182

Dear Ms. Dortch:

Press reports suggest that the draft order now circulating in the above-referenced media ownership proceeding will break from a long line of FCC precedent and treat television Joint Sales Agreements ("JSAs") as attributable interests for purposes of determining compliance with the Commission's media ownership rules. These reports also suggest that the order will permit only a brief, two-year, period within which parties to such agreements will be required to conform their arrangements to comply with the new multiple ownership restrictions. As the record reflects, there is no basis for attributing television JSAs and a decision to do so would be contrary to the public interest. By this letter, Nexstar Broadcasting, Inc. ("Nexstar") highlights the following legal flaws that would be present in a decision to attribute television JSAs as reportedly proposed in the draft order:

- The FCC failed to provide notice sufficient to satisfy Section 553 of the Administrative Procedure Act ("APA") that it might attribute television JSAs.
- A decision to attribute television JSAs would be arbitrary and capricious in violation of Section 706 of the APA.
- If the Commission nevertheless determines that attribution is appropriate, a refusal to permanently grandfather existing arrangements and allow them to be freely transferable would violate the Fifth Amendment because it would constitute an uncompensated governmental taking and be impermissibly retroactive.
- A refusal to permanently grandfather existing JSAs and permit their free transfer would also conflict with precedent and thus be arbitrary and capricious.

Each of these issues is discussed in more detail below.

I. The FCC Has Failed to Provide Adequate Notice that it Might Attribute JSAs.

A decision by the Commission to attribute television JSAs in this proceeding would be inconsistent with the APA's notice and comment requirements, which mandate that the FCC provide notice of a proposed rulemaking "adequate to afford interested parties a reasonable opportunity to participate in the rulemaking process." *Florida Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988). "This requirement serves both (1) 'to reintroduce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies'; and (2) to assure that the 'agency will have before it the facts and information relevant to a particular administrative problem.'" *MCI Telecomms. Corp. v. FCC*, 57 F.3d 1136, 1140-1141 (D.C. Cir. 1995) (quoting *Nat'l Ass'n of Home Health Agencies v. Schweiker*, 690 F.2d 932, 949 (D.C. Cir. 1982)). The notice provided in this proceeding served neither of these purposes and was thus defective.

The notice of proposed rulemaking in *this proceeding*[1] did not indicate that the agency intended to consider attribution of television JSAs. Although the *Quadrennial NPRM* referenced JSAs in passing, these vague mentions were insufficient to put interested parties on notice that the Commission might determine to change the status of JSAs and make them attributable in this proceeding. First, in the "background" discussion the FCC noted its prior determination to attribute radio JSAs, as well as the pendency of a separate proceeding in which the agency had asked whether to attribute television JSAs but in which "[n]o decision has been issued."[2] But a description of the regulatory treatment of *radio* JSAs and a note about a separate proceeding is not adequate notice that the Commission might take action on *television* JSAs here. Second, in describing the "potential benefits" of "sharing arrangements" generally, the FCC listed JSAs as among the sorts of agreements that broadcasters have argued benefit the public interest.[3] The inclusion of JSAs in this general enumeration, however, failed to provide sufficient notice that the Commission might alter the attributable status of JSAs in this proceeding. Third, the FCC included JSAs in a parenthetical listing of "certain named agreements" that its current attribution analysis focuses on.[4] This, too, is insufficient under the APA's notice and comment requirements to notify interested parties that the Commission would be considering a change in the attributable status of television JSAs in the Quadrennial Review. And, although certain of

[1] *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011) ("*Quadrennial NPRM*").

[2] *Id.* ¶¶ 196-197; *see id.* n.532 (noting that "the Commission previously sought comment on whether to attribute television JSAs" and citing separate proceeding).

[3] *Id.* ¶ 201; *see id.* ¶ 203 (describing arguments advanced by the Local TV Coalition concerning "a JSA and an SSA" between two stations in the Burlington, Vermont—Plattsburgh, New York market); *id.* n.523 (describing NAB's arguments concerning a particular JSA).

[4] *Id.* ¶ 207.

the comments may have discussed JSAs, it is settled under the APA that "notice necessarily must come—if at all—from the Agency."[5]

Even though eight years ago the FCC issued a notice of proposed rulemaking that expressly sought comment on the question of television JSA attribution,[6] that *2004 NPRM* does not authorize a decision now, in the Quadrennial Review. Nowhere in the *Quadrennial NPRM* did the Commission indicate that it intended to resolve the issues raised in that separate docket here; rather, as noted above, the FCC simply cited to its existence as a separate, distinct proceeding. A decision to resolve issues raised in the *2004 NPRM* here would depart sharply from other situations in which the Commission has decided to resolve matters already pending elsewhere within another proceeding. Indeed, when the FCC determined that it would resolve the question of *radio* JSA attribution within the scope of the 2002 media ownership review, it provided notice of its intent to do so in the notice of proposed rulemaking which *initiated* that proceeding, not in the order concluding it.[7]

Moreover, the Commission's persistent course of conduct during the near-decade since it issued the *2004 NPRM* undermines any suggestion that broadcasters should have reasonably been on notice that the agency was likely to decide to attribute television JSAs eight years later. Since release of the *2004 NPRM*, the FCC has granted dozens, if not more, applications that included JSAs without considering those agreements to be attributable.[8] In fact, it has developed a specific set of criteria against which it has consistently judged JSAs.[9] It has, likewise, permitted

[5] *Small Refiner Lead Phase–Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983); *see Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991) (explaining that because it is "the business of the" agency, "not the public, to foresee" and address potential issues, "comments by members of the public [do] not in themselves constitute adequate notice").

[6] *See Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, Notice of Proposed Rulemaking, 19 FCC Rcd 15238 (2004) ("*2004 NPRM*").

[7] *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 17 FCC Rcd 18503, 18506 (¶ 7) (2002) ("*2002 NPRM*") (enumerating pending proceedings, including the *Local Radio Ownership NPRM* which sought comment on attribution of radio JSAs, and stating that "Comments filed in those proceedings will be incorporated in this proceeding"); *see also 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13743 n.691 (¶ 316 n.691) (2003) ("*2002 Biennial Review Order*") ("[W]e specifically sought comment in the *Local Radio Ownership NPRM* on whether to attribute radio JSAs . . . We will issue a future Notice of Proposed Rulemaking to seek comment on whether or not to attribute television JSAs.").

[8] Indeed, the FCC approved a number of such transactions as late as the fourth quarter of 2012. *See, e.g.*, FCC File Nos. BALCDT-20120725AGJ (KLRT-TV), BALCDT-20120725AGK (KASN) (granted Dec. 11. 2012); FCC File Nos. BALCDT-20120726AGT (WKRC-TV), BALCDT-20120726AGX (WSTR-TV) (granted Nov. 23, 2012); FCC File No. BALCDT-20120726AGU (KMYS(TV)), BALCDT-20120726AGV (WOAI(TV)) (granted Nov. 23, 2012); FCC File Nos. BALCDT-20120726AHF (WPMI-TV), BALCDT-20120726AHE (WJTC-TV) (granted Nov. 23, 2012); FCC File No. BALCDT-20120822ABW (KBTV-TV) (granted Nov. 23, 2012).

[9] *See, e.g., KHNL/KGMB License Subsidiary, LLC*, 26 FCC Rcd 16087 (2011); *Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (2004); *see also Sagamorehill of Corpus Christi Licenses, LLC*, 25 FCC Rcd 2809 (2010); *Piedmont Television of Springfield License LLC*, 22 FCC Rcd 13910 (2007).

many more JSAs to exist without FCC approval (because, for example, they were not entered into in connection with a transaction separately requiring approval) for years, without any suggestion of regulatory action. Indeed, it appears that more than 70 such agreements are in place today, many of which were entered into after 2004. More than half of these are in medium and small DMAs ranked 100 or higher, where duopolies are generally impermissible but broadcasters are in acute need of flexibility. This consistent and continuous pattern of regulatory action has led broadcasters to reasonably believe that the Commission—as it should—recognizes that television JSAs serve the public interest and that it intended to maintain the *status quo* by leaving these agreements non-attributable, despite the *2004 NPRM*'s more than eight-year-old suggestion to the contrary.

Further, on February 15, 2012, several weeks before comments on the *Quadrennial NPRM* were due, the FCC released a public notice listing the *2004 NPRM* proceeding as among a number of "candidate[s] for termination."[10] According to the notice, the listed proceedings had been identified as ripe for such treatment based on a preliminary determination that "no further action is required or contemplated" and the fact that "no pleadings or other documents ha[d] been filed for several years."[11] As a result, when broadcasters filed comments on the *Quadrennial NPRM* in March and April of 2012, they had every reason to believe that the Commission intended to, and likely would, *terminate* the proceeding commenced by the *2004 NPRM* as dormant.[12] These procedural developments only added to the already significant pattern of conduct suggesting that the FCC intended to do exactly the opposite of what it had proposed in the *2004 NPRM*. It was not until September 27, 2012—many months after the formal comment cycle in this proceeding closed—that the Consumer and Governmental Affairs Bureau issued an order indicating that it had *sua sponte* decided not to terminate the *2004 NPRM* proceeding because "further action . . . may be required."[13] Even then, the agency gave no official indication that it intended to take such action in the course of the Quadrennial Review, leaving interested parties instead to learn of its plans by informal reports appearing in the trade press. In these circumstances, it cannot be said that the agency has complied with the APA's notice requirement. *Cf. Prometheus Radio Project v. FCC*, 652 F.3d 431, 453 (3d Cir. 2011) (noting that all parties, including the FCC, conceded that publication of regulatory proposal in New York Times editorial was insufficient to comply with APA notice requirements, even where the FCC Chairman subsequently issued a press release seeking comment on that proposal).

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[10] *Consumer & Governmental Affairs Bureau Seeks Comment on Termination of Certain Proceedings as Dormant*, Public Notice, 27 FCC Rcd 1613 (2012).

[11] *Id.*

[12] Comments on the public notice proposing termination of the *2004 NPRM* were due on April 5, 2012, and no party objected to the termination of the *2004 NPRM* proceeding.

[13] *Termination of Certain Proceedings as Dormant*, Order, CG Docket No. 12-39, DA 12-1545, 2012 WL 4470564, ¶ 8 (rel. Sept. 27, 2012).

II. A Decision to Attribute Television JSAs Would Be Arbitrary and Capricious.

Even if the FCC had provided adequate notice that it intended to consider television JSA attribution issues in this proceeding, a decision to attribute such arrangements would be arbitrary and capricious in violation of the APA.

Most significantly, such a result is unsupported by—and, indeed would "run[] counter to"—the evidence before the FCC. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).[14] The record is replete with evidence that JSAs *promote*, rather than undermine, the agency's public interest objectives and, in particular, enhance local news operations. Indeed, as Commissioner McDowell recently remarked, "[t]hese agreements provide efficiencies lowering the operation and production costs for broadcasters enabling them to deploy economized resources to the benefit of consumers,"[15] thus "bringing new sources of news and information to smaller towns across America."[16] As a result, they "*enhance* viewpoint diversity and augment local news and information programming in the places that need it most," by "add[ing] hours of local news to smaller markets that would not have it otherwise."[17]

For its part, Nexstar is party to JSAs covering seventeen full-power television stations. These relationships produce synergies and efficiencies that have enabled Nexstar to invest substantial financial resources to improve the service that both its owned stations and those with which it partners deliver to the public. Since 2001 Nexstar has invested a total of nearly $56 million in capital improvements related to television stations serving markets in which it is a party to a JSA, with expenditures ranging from approximately $1 million to more than $10 million in a given market. The expenditures, including more than $13 million in improvements related to enhanced news and weather operations, have provided tangible public interest benefits that would not be possible absent a JSA. For example, in Joplin, MO (DMA #149), Nexstar has invested nearly $3.5 million in news and weather improvements. As explained in Nexstar's comments, the Doppler weather radar system that was purchased for KSNF(TV) and KODE-TV was instrumental in saving lives in May 2011 when a devastating tornado hit Joplin with destructive and deadly force.[18]

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[14] *See id.* (agency decision arbitrary and capricious where it failed to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'") (internal citation omitted).

[15] Written Statement of Commissioner Robert M. McDowell, Before the United States House of Representatives Committee on Energy and Commerce, Subcommittee on Communications and Technology (Dec. 12, 2012), *available at* http://www.fcc.gov/document/commissioner-mcdowell-statement-hearing-broadband-spectrum-law ("McDowell Dec. 12, 2012 Statement"), at 15.

[16] Remarks of Commissioner Robert M. McDowell, Before the Minority media and Telecommunications Council Broadband and Social Justice Summit (Jan. 16, 2013), *available at* http://www.fcc.gov/document/commissioner-mcdowells-remarks-mmtcs-broadband-summit ("McDowell Jan. 16, 2013 Statement"), at 3.

[17] *Id.*

[18] *See* Nexstar Comments at 30.

In addition to the examples provided in its comments,[19] the efficiencies and synergies produced by cooperative arrangements that include JSAs have enabled Nexstar and its partners to provide more and better local news, enhanced public affairs programming, and improved community service, even while they face intense and ever-increasing competition for advertising dollars. For example, in the past year: [20]

- **Evansville, Indiana (WEHT and WTVW) (DMA #104):** After Hurricane Sandy hit in October 2012, the stations worked with the Evansville Red Cross to coordinate a 13-hour mediathon with the Evansville Courier and Press. The mediathon kicked off with a telethon hosted by WTVW. The stations' fundraising efforts resulted in nearly $100,000 raised for the Red Cross.

- **Lubbock, Texas (KLBK-TV and KAMC) (DMA #143):** On April 29, 2012, a massive storm containing large hail and producing the possibility of a tornado took aim at Lubbock. Using live Doppler radar available to the stations as a result of their JSA, KLBK-TV and KAMC tracked the storm in real time and alerted viewers to the possibility of dangerous weather. At its height, the storm produced hail over 4 inches in diameter and winds in excess of 80 miles per hour. The storm caused an estimated $30 million worth of damage to the area. The early warning provided by the stations doubtlessly saved lives.

- **Monroe, Louisiana-El Dorado, Arkansas (KARD and KTVE) (DMA #137):** In May 2012, two fast breaking news stories with far-reaching public health consequences affected the market – a chemical plant explosion and an oil field explosion. Satellite trucks and electronic news gathering vehicles purchased by KARD and available to both KARD and KTVE through their JSA as a result of Nexstar's $1 million-plus investment in news operations were quickly deployed. Once on the scene, reporters from both stations provided their respective viewers with critical emergency information and on-the-spot coverage.

- **Peoria-Bloomington, Illinois (WMBD-TV and WYZZ) (DMA #116):** During the 2012 election, the stations produced long-form interviews with candidates for the market's four U.S. Congressional districts as well as with candidates for state house and senate office. These interviews aired every night during the five weeks leading up to the election. Using resources from WMBD-TV and as a result of Nexstar's news-related investments totaling nearly $1 million, WYZZ was able to provide continuous prime time local coverage of election returns on election night.

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[19] *See id.* at 29-31, Appendix A; Nexstar Reply Comments at 17-20. In its comments, Nexstar discussed its JSAs, as well as shared services agreements, outsourcing agreements, and other similar agreements together as "Local Service Agreements" or "LSAs." *See id.* at 2.

[20] Attachment A hereto provides additional examples of the public interest benefits produced by Nexstar's cooperative arrangements in 2012. Attachment B hereto contains excerpts from Nexstar's comments and reply comments setting forth still more examples of such benefits. (Attachment B also contains certain information concerning the Billings, MT and Erie, PA markets, which involve Local Marketing Agreements ("LMAs") rather than JSAs.)

- **Rockford, Illinois (WQRF-TV and WTVO) (DMA#134):** Over the past 12 months, the JSA has allowed WTVO to expand local news coverage by 10 hours per week. Due to the expense associated with a news start-up, it would not be economically feasible for either WQRF-TV or WTVO to produce stand-alone new programming without the JSA, but the efficiencies generated by cooperative arrangements have allowed Nexstar to invest more than a half-million dollars in news operations for the stations. In addition, in 2012, the stations raised a record amount of funds—more than $140,000—for ARC, a local advocacy group for the mentally challenged. The stations have also raised more than $90,000 annually in support of the local homeless shelter.

- **Wilkes Barre-Scranton, Pennsylvania (WBRE-TV and WYOU) (DMA #54):** State-of-the-art "WSI" storm prediction and tracking computers are available to both stations through their JSA. This technology proved essential in the Spring of 2012 as tornados threatened Northeastern Pennsylvania. Similarly, when Hurricane Sandy approached in October 2012, meteorologists provided both stations with hourly updates describing where the storm was heading and its strength. And, on election night, WBRE-TV provided expanded live coverage of the national and local elections.

As Nexstar and others have shown, the supposed "evidence" cited by parties advocating for JSA attribution is based on mischaracterizations of the facts, flawed analyses, or retransmission consent-related contentions that have no place in this proceeding.[21] Nor is there any evidence that the Commission's existing practice of examining JSAs under its existing "control" precedents—and deeming any relationship that gives another station or party undue influence over a station's programming, personnel, or finances to be attributable—is insufficient.[22] Accordingly, if the FCC were to attribute JSAs, it would likely "cause the unintended consequences of raising expenses and reducing the amount of local programming provided by a broadcaster."[23] A decision to attribute JSAs based on this record would thus be arbitrary and capricious both because the record contains insufficient evidence of a problem in need of industry-wide regulation, and because it shows that JSA attribution would undermine the very public interest goals that underlie the FCC's media ownership policies. *See, e.g., Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 843, 839 (D.C. Cir. 2006). And, even if the Commission could rely on comments submitted in response to the *2004 NPRM* to support a decision here—

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[21] *See, e.g.*, Nexstar Reply Comments at 17-21; Fox Reply Comments at 10-12; NAB Reply Comments at 34-44; *see also* McDowell Jan. 16, 2013 Statement, at 3 (noting "dearth of evidence to support . . . a radical policy shift" with respect to JSA attribution).

[22] *See, e.g.*, Nexstar Reply Comments at 17. *Cf. Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 762 (6th Cir. 1995) (agency decision that fails to "consider [a] less restrictive alternative[] and explain its reasons for failing to adopt" it is arbitrary and capricious); *accord State Farm*, 463 U.S. at 48 (an "alternative way of achieving the objectives of the Act should have been addressed and adequate reasons given for its abandonment"). Commissioner McDowell recently noted that "the Commission should not regulate without a full understanding of how these agreements are used in the marketplace and whether there are systemic abuses that have limited competition and viewpoint diversity in broadcast markets." McDowell Dec. 12, 2012 Statement, at 15; *see* McDowell Jan. 16, 2013 Statement, at 3.

[23] McDowell Dec. 12, 2012 Statement, at 15; *see* McDowell Jan. 16, 2013 Statement, at 3 (attribution of JSAs could "rais[e] costs, reduc[e] local programming and ultimately diminish[] diversity").

which it cannot—the outcome would be the same, because the comments filed in that proceeding overwhelmingly *opposed* attribution of TV JSAs.[24]

Further, the FCC's earlier determination that radio JSAs should be deemed attributable does not justify a decision to treat television JSAs the same way. As Nexstar and others have explained, there are significant differences between both the rules applicable to television and radio stations and the types of JSAs that are customary across the two industries.[25] Specifically, the radio ownership rules allow for substantially more consolidation than the television ownership rules. Radio owners may hold attributable interests in up to eight stations in large markets with no consideration given to market rankings, while television owners in large markets are capped at a maximum of two stations with only one to be in the top-4. Even in very small radio markets with 14 or fewer stations an owner can own up to five stations, and in all radio markets ownership of at least two stations is permissible. This is not so in the smallest of television markets, where ownership is capped at one station.

In addition, television JSAs normally provide for the selling entity to receive a commission (usually 30%) for its services, while radio JSAs usually called for payment of a flat fee at the time the FCC decided to attribute them. Chief among the FCC's reasons for attributing radio JSAs was its determination that because of this flat-fee structure, "licensees of stations subject to [radio] JSAs have less incentive to maintain or attain significant competitive standing in the market."[26] Because television JSAs are generally commission-based, stations subject to such agreements maintain the very incentives the FCC found lacking in the radio context, rendering any analysis comparing the two inapposite. A decision that reflexively applies the Commission's radio JSA precedent to the television industry irrespective of these significant differences would thus violate the APA's fundamental requirement that "[a]n agency . . . justify its failure to take account of circumstances that appear to warrant different treatment for different parties." *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (citations omitted); *cf. Prometheus Radio Project v. FCC*, 373 F.3d 372, 418 n.52 (3d Cir. 2004) ("No reason exists . . . for the Commission's local television ownership limits to mirror precisely its local radio ownership limits, particularly given that there are generally more radio stations than television stations in a given market.").

If anything, the FCC is obligated to reconcile its policies governing television station ownership and advertising sales with those applicable to cable and other multichannel video programming distributors ("MVPDs"), with which television stations most directly compete for advertising dollars, rather than radio. MVPDs are subject to no ownership caps at all,[27] let alone restrictions on joint advertising sales arrangements. Indeed, as NAB has explained, such arrangements are common among MVPDs, further fueling the already fierce competition that these entities

[24] Indeed, not a single one of the commenters urging JSA attribution here filed comments in that proceeding.

[25] *See, e.g.*, Nexstar Reply Comments at 15-16.

[26] *2002 Biennial Review Order*, 18 FCC Rcd at 13745-46 (¶ 320).

[27] MVPD ownership has never been limited at the local level, and the D.C. Circuit vacated the 30% national cap on horizontal cable ownership in 2009. *Comcast v. FCC*, 579 F.3d 1 (2009).

provide to television stations in local advertising markets.[28] Treating television JSAs as the equivalent of outright station ownership while leaving TV stations' direct competitors free to join forces pursuant to analogous agreements would similarly violate the APA. *See, e.g.*, *Burlington Northern & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 776–77 (D.C. Cir. 2005) (agency decision arbitrary and capricious where it treats similarly situated parties differently without an adequate reason for doing so).

III. A Refusal to Permanently Grandfather and Allow Transfers of Existing Television JSAs Would Violate the Fifth Amendment.

If the Commission nevertheless decides to attribute television JSAs, constitutional considerations require it to permanently grandfather existing relationships, rather than merely allowing a two-year "transition period," and to permit rights under JSAs to be freely transferable. A failure to take these steps would violate both the Takings Clause and the Due Process Clause of the Fifth Amendment.

JSAs are, at bottom, contracts, and "[v]alid contracts are property" protected by the Takings Clause. *Lynch v. United States*, 292 U.S. 571, 579 (1934). Parties to contractual agreements have constitutionally protected property rights in the value of the prudent investments made in furtherance of such agreements. *See Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 (1979) (requiring compliance with subsequently enacted regulations is a taking where government encouraged investment in reliance on prior regulatory regime). Further, property ownership includes the right "to . . . dispose of" property as the holder desires. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).

The FCC's existing regulatory regime, particularly given its approval of a significant number of transactions involving JSAs both before and after the *2004 NPRM*, created reasonable investment-backed expectations that such agreements would remain permissible without attribution. As discussed above, Nexstar itself is a party to JSAs involving seventeen full-power television stations that will be impacted by a decision in this proceeding. These agreements are all for terms exceeding the two-year "transition period" that the FCC is reportedly considering.[29] In addition, Nexstar has invested tens of millions of dollars to improve the stations' operations and community outreach in furtherance of these agreements and has a reasonable expectation of earning millions of dollars over time pursuant to their terms. These investments, including expenditures on enhanced, state of the art newsgathering and weather equipment, physical plant for shared use by the stations, and local news and sports coverage, have been made based on reasonable expectations regarding the revenue (generally amounting to 30% of the sold station's advertising revenue) and cost savings that would result from the joint arrangements during their terms. A failure to permanently grandfather these JSAs and/or a decision to restrict their transfer to third parties will leave Nexstar and similarly situated broadcasters without any way to recoup the multi-million dollar investments or make up for the lost earnings that they would otherwise

[28] *See, e.g.*, NAB, Notice of Ex Parte Communication, MB Docket No. 09-182, at 3-4 (Dec. 4. 2012).

[29] The initial terms of all but two of the agreements range from eight to ten years, and each agreement automatically renews unless one party provides at least six months' advance notice of intent to terminate prior to the end of the initial term.

earn under the agreements. Under these circumstances, making JSAs attributable interests will deprive Nexstar and other parties to JSAs of the benefits of their contractual agreements and investments made in furtherance of those agreements, without any evidence of countervailing public interest benefits, in violation of the Takings Clause. *Penn Cent. Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (rules that "interfere[] with . . . distinct investment-backed expectations" are an unlawful regulatory taking).

Moreover, a decision that fails to protect the rights of parties to existing JSAs would trigger significant Due Process concerns. Under the Due Process Clause, retroactive regulations that "change the legal consequences of transactions long closed" are highly disfavored. *E. Enters. v. Apfel*, 524 U.S. 498, 548 (1998) (Kennedy, J., concurring in the judgment and dissenting in part); *see United States v. Sec. Indus. Bank*, 459 U.S. 70, 78 (1982). The Fifth Amendment thus constrains the Commission's ability to go back in time and change the consequences of transactions that closed long ago, unless there is evidence—which does not exist here—that such change is necessary to promote a legitimate government interest. Accordingly, a refusal to permanently grandfather and permit the free transfer of rights under existing JSAs would constitute impermissible retroactive rulemaking as well.

IV. Precedent Requires Permanent Grandfathering and Transferability of Existing Television JSAs.

The FCC's own precedent also requires the agency to, at a minimum, permanently grandfather and permit transfers of existing television JSAs. Foremost, the Commission has allowed grandfathered television LMAs entered into prior to November 5, 1996 to remain in effect for more than 15 years, and has permitted them to be transferred to new owners for the duration of this period. In deciding to do so, the FCC acknowledged that "[t]he parties to these LMAs entered into these arrangements when there was no Commission rule or policy prohibiting them," and that "[t]here consequently are strong equities against requiring them to divest their interests in these LMAs and upset the settled expectations established by these plans and investments."[30] The Commission also relied on record evidence—like that present here—that these agreements had "resulted in public interest benefits."[31] Likewise, when the FCC revised its radio audience share and numerical limits in 1992, it explicitly declined to restrict the transfer of groups that were acquired in compliance with the limits adopted in its order but later grew to a level exceeding the audience share limit, because its goal had been "to promote robust competition," and "penalizing enterprises that grow into stronger competitors [was] [in]consistent with this objective."[32] The Commission further has routinely grandfathered existing combinations when

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[30] *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12964-65 (¶¶ 144-46) (1999) (subsequent history omitted); *see also Revision of Radio Rules and Policies*, 9 FCC Rcd 7183, 7193 (¶ 57) (1994) (permitting transfers of radio time brokerage agreements that were allowable under its prior rules but impermissible under its revised regulations, acknowledging that "[t]o hold otherwise, as a general matter, could severely and unnecessarily restrict the marketability of stations and station combinations that involve brokerage agreements and seriously undermine the utility of such agreements").

[31] *Id.* at 12965 (¶ 145).

[32] *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6397 (¶ 48) (1992).

modifying its media ownership rules.[33] Finally, the FCC has historically allowed the intact transfer of numerous radio and other broadcast combinations, consistently recognizing that transfer of an existing combination "do[es] not increase the combined advertising shares of . . . existing groups or result in increased levels of ownership concentration."[34] It is rudimentary that an agency cannot, consistent with the APA, depart from its settled precedent absent reasoned explanation, and there is no basis for any such explanation here. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009); *see also Verizon Tel. Cos. v. FCC*, 570 F.3d 294, 300 (D.C. Cir. 2009).

In sum, a decision to attribute television JSAs and to permit only a brief, two-year, period within which parties must conform their arrangements to comply with the multiple ownership restrictions suffers from multiple fundamental legal flaws. As a result, the FCC should decline to attribute these agreements at all, or, at the very least, permanently grandfather and permit the free transferability of existing television JSAs.

Respectfully submitted,

/s/Elizabeth Ryder

Elizabeth Ryder
Vice President & General Counsel

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[33] *See, e.g.*, *2002 Biennial Review Order*, 18 FCC Rcd at 13808 (¶ 484); *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1078-86 (¶¶ 108-22) (1975), *aff'd FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) ("*NCCB*").

[34] *See, e.g.*, *AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,069 (¶ 15) (2000) (transfer of an existing combination "do[es] not increase the combined advertising revenue shares of . . . existing groups or result in increased levels of ownership concentration"); *EWS News Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 20243, 20247 (¶ 15) (1997) (awarding waiver and stating that "since grant of this application will preserve an existing combination, we do not believe that continued joint ownership of the stations will decrease the level of diversity and competition in the market"). *Accord United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines*, 57 Fed. Reg. 41,552 (1992), *revised*, 4 Trade Reg. Rep. (CCH) ¶ 13104 (Apr. 8, 1997) (stating that transfers that do not increase ownership concentration are "unlikely to have adverse competitive consequences and ordinarily require no further analysis").

ADDITIONAL BENEFITS OF NEXSTAR JSAs

In addition to fostering operating efficiencies and economies of scale, JSAs (including those between the stations identified below) have led to numerous public interest benefits in markets across the country. These benefits stem from increased technological, capital, and personnel resources, as well as local news and other enhanced service to the local community. Following are examples of some public interest benefits as a result of the efficiencies generated from the JSAs that Nexstar is party to. Further information on the benefits as a result of the JSAs can be found in Nexstar's comments submitted in this proceeding.

Abilene, Texas: KTAB-TV and KRBC-TV (DMA #164)

- More local news programming
    - Not all news stories require coverage by multiple reporters. In these instances, KTAB-TV and KRBC-TV can send one reporter to cover a news event for both stations, thereby freeing other reporters to cover other stories and, thus, increasing the amount and variety of news available to the community.
    - Without the increased capital resources of KTAB-TV, KRBC-TV likely would not have been able to continue providing local news programming. The JSA not only allows KRBC-TV to provide 16.5 hours of local news programming, but also helped the station to outperform the market in many key areas in 2012 including significant revenue growth.
    - Since the initiation of the JSA in 2003, Nexstar has invested nearly $3 million in news programming and facilities improvements. This level of investment would not be possible with the JSA.
- Increased sponsorship and support of local charity and community events and organizations
    - In 2012, the stations partnered with or sponsored more than 25 different community events for organizations such as The United Way (helping to raise more $1.5 million), Disabilities Resource Center (helping to raise more than $30,000 with the Outlaws and Legends concert), Hendricks Home for Children (collecting toys for underprivileged children as it has done for the last 10 years), the Ben Richie's Boys Ranch (helping to raise more than $50,000 with their annual telethon), and the West Texas Rehab Center (helping to raise more than $1 million with their annual telethon).
- Sponsor a greater number of public awareness campaigns that reach more of the community due to their coverage on both stations.
    - In 2012, the stations launched the "No Text Big Country," "Child Lures Prevention," and "Don't Drink and Drive" campaigns as well as a Hometown Heroes recognition program. "No Text Big Country," is a community awareness

campaign to educate about and prevent texting and driving. Both stations run public service announcements ("PSAs") and news stories on this issue. The "Child Lures Prevention" campaign was a 10 day news series focused on the prevention of child abduction. Both stations ran the series and printed a parent's guide to help educate parents on the lures that predators use on children. The "Don't Drink and Drive" campaigns include multiple public service projects that are focused on saving lives. Project Graduation, Project Roadblock, Live to Graduate all try to educate the public on the dangers of drinking and driving. The Hometown Heroes recognition program is a weekly news segment focused on recognizing the men and women who risk their lives for us every day. Military, Police, Firefighters and EMS personnel are recruited through an on air PSA schedule and then featured in news stories.

Amarillo, Texas: KAMR-TV and KCIT (DMA #130)

- Increased sponsorship and support of local charity and community events and organizations
  - The stations helped to raise $25,000 more in 2012 than had been raised in past years for the Susan G. Koman Race for the Cure. And, due to KAMR-TV's and KCIT's over-the-air and online community outreach efforts, the local race had the largest number of participants in its history.
- More local sports programming
  - The JSA allows viewers access to more than 30 minutes of seasonal high school sports per week, and the stations are the only ones in the market to air West Texas A&M college football games.

Evansville, Indiana: WEHT and WTVW (DMA #104)

- Increased sponsorship and support of local charity and community events and organizations
  - WTVW and WEHT promoted the Easter Seals Rehabilitation Center's fund raising drive. A telethon hosted by the stations helped Easter Seals raise over $1 million locally for the Center.
  - Working with Old National Bank to promote "101 Men Who Cook," a community event featuring local chefs, the stations helped raise $104,000 for a local charity.
  - The stations partnered with student-run AcesTV and the University of Evansville to create Inside AcesTV. Each week, student-produced features air on WTVW and WEHT newscasts. The features are also posted online on TriStateHomepage.com.

  - After Hurricane Sandy, the stations worked with the Evansville Red Cross to coordinate a 13-hour mediathon with the Evansville Courier and Press. The mediathon kicked-off with a telethon hosted by WTVW. The stations' fundraising efforts resulted in nearly $100,000 raised for the Red Cross.

- More public affairs programming

  - Since entering into a JSA with WEHT, WTVW has increased the amount of public affairs television that it provides to viewers. "Local 7 Lifestyle" is a daily, locally produced, hour-long community program. A portion of each day's live telecast features guests from community organizations seeking to raise awareness about their cause.

  - Production teams from both stations work together to produce the weekly "Academic Challenge" program, a quiz bowl in which local high school students compete. The production teams also produce "My Hometown," a weekly 30 minute special featuring neighborhoods and towns throughout the viewing area. Both of these programs are broadcast on WTVW.

  - Under the JSA, WTVW now has access to the WEHT ENG and satellite truck equipment allowing for expanded live local sporting events and other live local news coverage.

- News investment

  - In the one year since initiating this JSA, Nexstar has spent more than $700,000 for news expansion upgrades, including implementing HD news on WTVW.

<u>Joplin, Missouri-Pittsburg, Kansas: KSNF and KODE-TV (DMA #149)</u>

- More local news programming

  - Since entering into the JSA, KSNF has substantially increased its news offerings, adding a 4:00 p.m. news and lifestyle show, an hour long 6:00 p.m. weekday newscast (the market's only hour-long 6:00 p.m. newscast), and a 6:00 p.m. newscast on Saturdays.

  - Since initiation of the JSA in September 2002, Nexstar has spent nearly $3.5 million renovating the stations' news studios, preparing to initiate HD news broadcasts on both stations (which launched January 1, 2013), and upgrading the Doppler radar system that was a key to saving lives on May 22, 2011 when the EF-5 tornado tore through Joplin.

- More local sports programming

  - Expanded coverage of high school football games, including games in outlying communities that would otherwise receive little if any coverage.

Lubbock, Texas: KLBK-TV and KAMC (DMA #143)

- Access to lifesaving information and technology
  - On April 29, 2012, a massive storm containing large hail and producing the possibility of a tornado took aim at Lubbock. Using live Doppler radar available to the stations as a result of their JSA, KLBK-TV and KAMC tracked the storm in real time and alerted viewers to the possibility of dangerous weather. At its height, the storm produced hail over 4 inches in diameter and winds in excess of 80 miles per hour. The storm caused an estimated $30 million worth of damage to the area. The early warning provided by the stations doubtlessly saved many lives.

Monroe, Louisiana-El Dorado, Arkansas: KARD and KTVE (DMA #137)

- Access to lifesaving information and technology
  - The Monroe-El Dorado market is one of only a handful of markets in the nation not served by government-owned NEXRAD weather radar. Without this radar, communities in the market are forced to rely on NEXRAD radar in Little Rock, Shreveport or Jackson. Unfortunately, radar in those communities sweeps too far above the curvature of the earth to provide accurate weather information to the residents of Monroe-El Dorado. Filling this gap is a live Doppler radar shared by KARD and KTVE. As a result of their JSA, viewers of both stations have access to critical weather information that would otherwise not be available.
  - In May 2012, two fast breaking news stories with far-reaching public health consequences affected the market—a chemical plant explosion, and an oil field explosion. Satellite trucks and electronic news gathering vehicles purchased by KARD and available to both KARD and KTVE through their JSA were quickly deployed. Once on the scene, reporters from both stations provided their respective viewers with critical emergency information and on-the-spot coverage.
- Prevention of a station's financial failure
  - Under a former owner, KARD struggled financially for many years and went dark twice, depriving the community of a broadcast voice. Since its sale to Nexstar and JSA with KTVE, however, the station is no longer at risk of failing.
- More local news programming
  - The JSA has allowed KARD to add nearly eight hours of local news programming—an increase of 300% within the past two years alone. The station now airs an hour-long 7:00 a.m. newscast complete with local news, weather, sports, and in-studio interviews. This is the market's only 7:00 a.m. newscast.

- KTVE also has added more than five hours of local new programming, including morning and 12:00 noon news shows. This represents a 52% increase in locally-produced news programming on KTVE since the JSA relationship began.

- Because of the JSA, viewers in El Dorado, Arkansas also have access to the 12:00 pm newscast produced by Nexstar for broadcast on Nexstar's stations in the Little Rock-Pine Bluff, Ft. Smith-Fayetteville-Springdale-Rogers and Shreveport-Texarkana markets covering news for all of Arkansas. The JSA also permits Nexstar to include news from El Dorado in the daily newscasts to inform viewers in other Arkansas markets of such news.

- News Investment

  - Since initiation of the JSA in 2008, Nexstar has spent $1.2 million in news expansion and equipment upgrades, including ensuring that the Doppler radar remains available to provide crucial severe weather information to the community.

<u>Peoria-Bloomington, Illinois: WMBD-TV and WYZZ (DMA #116)</u>

- Expanded political coverage

  - During the 2012 election, the stations produced long-form interviews with candidates for the market's four U.S. Congressional districts as well as with candidates for state house and senate office. These interviews aired every night during the five weeks leading-up to the election. Using resources from WMBD-TV, WYZZ was also able to provide continuous prime time local coverage of election returns.

- More local news programming

  - Before the JSA, WYZZ did not broadcast local news. WYZZ now airs an hour-long news program Monday through Friday at 9:00 p.m. The JSA has also resulted in an additional 5 hours of news programming on WMBD-TV each week.

- News Investment

  - Since implementation of the JSA in 2001, Nexstar has spent nearly $1 million for news expansion and equipment upgrades for these stations.

<u>Rochester, New York: WROC-TV and WUHF (DMA #153)</u>

- More local news programming

  - Since entering into a JSA, WROC-TV has added 5 hours of news programming to its schedule while WUHF has doubled the amounts of local news that it airs. Combined, this represents a 33% increase in local news across the two stations.

- Increased sponsorship and support of local charity and community events and organizations
  - Combining the resources, audience reach, and promotional capacities of two stations has allowed WROC-TV and WUHF to better promote the fundraising efforts of numerous local and national charities, including the American Red Cross, Foodlink (a Rochester food bank), the Ronald McDonald House, and the American Heart Association. This fundraising support takes various forms, including the production and broadcast of public service announcements and/or live event coverage, behind-the-scenes staffing, and event emceeing by on-air talent. For example, the stations have helped raise $85,000 in cash donations and collected 75,000 pounds of food over a two year period for Foodlink of Rochester.
- News Investment
  - Since implementation of the JSA in 2005, Nexstar has spent $1.5 million for news expansion and facilities upgrades, including studio upgrades necessary for the broadcast of the news in HD.

<u>Rockford, Illinois: WQRF-TV and WTVO (DMA #134)</u>

- More local news programming
  - Due to the expense associated with a news start-up, it would not be economically feasible for WTVO or WQRF-TV to produce stand-alone new programming without the JSA. Over the past 12 months, the JSA has allowed WTVO to expand local news coverage by 10 hours per week.
  - WTVO is also able to produce weekly news interviews with community leaders, citizens, and experts that give voice to issues of particular concern to Rockford's minority population.
- News Investment
  - Since implementation of the JSA in 2005, Nexstar has spent more than $1.2 million to upgrade the news equipment and studios as well as launch local news on WQRF-TV.
- Increased sponsorship and support of local charity and community events and organizations
  - WQRF-TV and WTVO are now better able to serve their non-profit partners. In 2012, the stations raised a record amount (in excess of $140,000) of funds for ARC, a local advocacy group for the mentally challenged. The stations also raised more than $90,000 annually in support of the local homeless shelter. In the difficult economic climate where giving is down and government contributions to many community-based organizations have declined or ceased altogether, the

combined efforts of WQRF-TV and WTVO are making a difference to local non- and not-for-profits by helping them reach their fundraising goals and continue to serve the community.

- More public affairs programming
  - Using resources made available via the JSA, the stations have produced half-hour specials focused on important public health issues such as cancer and heart disease. These programs air quarterly and provide critical information directly to viewers in the safety and comfort of their homes.

San Angelo, Texas: KLST and KSAN-TV (DMA #197)

- More local news programming
  - Prior to its relationship with KLST, KSAN-TV provided the San Angelo market with only 5 hours of news per week, which included a weather forecast pre-produced from another market. Since the inception of the JSA, however, KSAN-TV has expanded its local news and programming by almost 400 hours per year.
  - Since initiation of the JSA in 2004, Nexstar has invested more than $1.5 million to expand local news on KSAN-TV and improve the stations' news equipment and facilities.
- More public affairs programming
  - The JSA allows KLST and KSAN-TV to team-up to create in-depth, local programming specials. This programming would be difficult, if not impossible, to produce individually. In the past 12 months alone, the stations have produced and broadcast programs such as a live forum on the Affordable Health Care Act at Angelo State University, a telethon for the Children's Miracle Network, a fall festival for special needs children and a special on severe weather.

Springfield, Missouri: KOZL-TV and KOLR (DMA #74)

- More weather programming
  - Weather-related news and information is more readily accessible. The JSA has allowed KOZL-TV and KOLR to create the region's largest staff of meteorologists, available to provide timely emergency weather information to both stations. This is particularly important in an area plagued by seasonal severe weather.
- More local sports programming
  - Under the JSA, the stations are able to broadcast a wider selection of football and basketball games from the SEC conference, as well as the Kansas City Chiefs' entire preseason football schedule.

- Expanded coverage of local high school and college sports is available with two half-hour weekend sports programs currently unavailable from other TV stations.

<u>Terre Haute, Indiana: WTWO and WAWV-TV (DMA #154)</u>

- More local news programming
  - The stations have added two locally produced shows since entering into the JSA. One show is a daily lifestyle and news program that is broadcast at 4:00 p.m. five days a week on WTWO. The other is a 30 minute program focused on business that airs twice each Sunday on WAWV-TV.
- More local sports programming
  - Because of the JSA, WTWO and WAWV-TV are able to produce live local sporting events. Further, the stations have been able to increase the number of Indiana State University football, basketball, and baseball games to which viewers have access.
- Environmental efficiencies
  - WTWO and WAWV-TV share news trucks and other mobile news gathering vehicles. Without the JSA, both stations would be sending cars and trucks to cover the same news stories, thus expending double the amount of gas (a not insignificant amount, given the large coverage areas of the station). The stations are also Win Energy's largest customer. Although they pull a substantial amount of power from the grid, the stations share a transmitter and power supply line, which actually helps save energy and allow Win Energy to provide more reliable power to consumers.

<u>Utica, New York: WFXV and WUTR (DMA #172)</u>

- More local news programming
  - In September 2011, WFXV and WUTR began airing local newscasts, something that neither station had done for 8 years. Today, the stations collectively broadcast 10 hours of news per week, with more planned in 2013.
  - In 2011, Nexstar spent more than $1.5 million to reintroduce local news on WFXV and WUTR, including necessary facilities upgrades. Moreover, the news on both stations is broadcast in HD (all in one of the smallest markets in the country).
- Increased sponsorship and support of local charity and community events and organizations
  - WFXV and WUTR participate in and cover a greater number of local charity events, including America's Greatest Heart Run and Walk, the Boilermaker 15k

Road Race, and the American Cancer Society's Relay for Life. These events each benefit important local and national causes. The America's Greatest Heart Run and Walk raised just over $1,250,000 in 2012; the Relay for Life raised just over $1,000,000 in 2012; and the Boilermaker road race raises approximately $500,000.

- More public affairs programming
  - The JSA allows the stations to produce and broadcast quality public affairs programming. In 2012, for example, they aired an hour-long special focused on domestic violence. The program received positive feedback from the community.

<u>Wilkes Barre-Scranton, Pennsylvania: WBRE-TV and WYOU (DMA #54)</u>

- Access to lifesaving information and technology
  - State-of-the-art "WSI" storm prediction and tracking computers are available to the stations through their JSA. This technology proved essential in the Spring of 2012 as tornados threatened Northeastern Pennsylvania. Similarly, when Hurricane Sandy approached in October 2012, meteorologists provided both stations with hourly updates describing where the storm was heading and its strength.
- Expanded political coverage
  - Due to the larger staff afforded by the JSA, the stations now provide expanded regional coverage of U.S. and Pennsylvania elections, including the race for the 10^{th} U.S. Congressional district, Pennsylvania senate district 29, and state senate district 23. On election night, WBRE-TV provided live coverage from the various campaigns above, while the overwhelmingly dominant station in the market, WNEP-TV, did not provide live, local coverage, but instead carried regular ABC network programming. Their "local" election coverage consisted of only pre-produced (not live) packages that aired on the WNEP D-2 station.
- More local news programming
  - Today, the JSA between WBRE-TV and WYOU allows WBRE-TV to maintain a 65-person news department that also provides unique news telecasts to WYOU. Absent the JSA, neither station individually could afford such an extensive news department.
  - WYOU did not air local news programming between 2007 and 2012 due to the unprofitability of producing news for the station. On April 2, 2012, WYOU relaunched news in high definition. Now, the station airs 22 hours of local news each week, including exclusive half hour newscasts at 12:00 noon and 7:00 p.m. Monday through Friday.

- WBRE-TV is an NBC affiliate and therefore home to numerous sporting events. These events occasionally preempt local news programming. Rather than leave viewers without news, the JSA allows WYOU to exclusively broadcast news programming usually airing on WBRE-TV.

- All of the news and public affairs programming broadcast on WBRE-TV and WYOU is broadcast in HD.

- More public affairs programming

  - WBRE-TV and WYOU, along with pahomepage.com, sponsored a month-long TV and web campaign designed to educate women throughout Northeast and Central Pennsylvania about breast cancer and the importance of regular self-exams. The month kicked-off with a special 3.5 hour live phone bank that was featured on the evening newscasts of both stations. Women throughout the area were able to call for information about breast health and to speak directly to doctors and cancer specialists.

Wichita Falls, Texas-Lawton, Oklahoma: KFDX-TV and KJTL (DMA #142)

- More local news programming

  - The JSA allows KJTL to air a local 9:00 p.m. newscast each weeknight. This earlier time is convenient for many people who are unable to stay up to watch the 10:00 p.m. evening newscast but who nevertheless want to catch-up on the events of the day before heading to bed. Prior to the JSA, KJTL did not air any news.

  - Nexstar has invested more than $1 million to upgrade the stations' equipment and facilities in order to broadcast the news on both stations in HD.

- Increased sponsorship and support of local charity and community events and organizations

  - KFDX-TV and KJTL are able to raise awareness for important causes through sponsoring a number of local charity events, including Race for the Cure, coat and fan drives, and the American Cancer Society's Relay for Life. Our fan drive helps over 400 families have a fan through the hot summer months and helps provide over 200 coats for the winter months. The stations' participation in Race for the Cure and Relay for Life helped generate more than $500,000 for the organizations. The stations' support for Hospice Tree of Lights helped generate more than $150,000 for end of life care.

ATTACHMENT B

EXCERPTS FROM COMMENTS AND REPLY COMMENTS REGARDING BENEFITS OF NEXSTAR JSAs

to continue providing local news, it must ignore the blanket generalizations and speculative unsupported theories of the public interest opponents that do not provide sufficient evidence to justify retaining the Local TV Multiple Ownership Rule and accept the hard evidence provided by broadcasters such as Nexstar, Belo and LIN about the improvements duopoly ownership has brought in their local markets and permit duopoly ownership in all markets.[51]

Nexstar, Belo and LIN have proven that television duopolies can render it economically feasible for the stations involved to provide a greater amount of local content (including local news broadcasts) than they would if they were to remain independent. The efficiencies and synergies that come through the shared use of production facilities and back office staff make the difference between profit and loss and ensure that local content continues to be a part of the duopoly station schedules.

IV. UNTIL THE COMMISSION PROVIDES DUOPOLY RELIEF IN ALL MARKETS, THE COMMISSION MUST ALLOW TELEVISION BROADCAST STATIONS TO CONTINUE OPERATING UNDER LOCAL SERVICE AGREEMENTS.

Without any credible evidence, public interest groups hypothesize that stations operating under Local Service Agreements are unable to devote sufficient resources to independent journalism as a result of staff reductions and resource sharing; assert that Local Service Agreements result in re-run content; claim that Local Service Agreements reduce the quality, quantity and diversity of local news coverage; and theorize that broadcasters are using these

[51] Notwithstanding the clear evidence of permitting duopolies in all markets, the Commission tentatively, but wrongly, concludes it should retain the television duopoly restrictions, and instead asks whether it should adopt a waiver standard for small markets facing severe competitive pressures. NPRM at p. 20. The fact that the Commission is asking if it should be adopting a new waiver standard for stations in medium and small markets is justification in and of itself that the television broadcast industry needs duopoly ownership relief. The Commission's solicitation of comments on a waiver standard is a clear acknowledgement that many broadcast television stations are struggling to survive and compete in the 21st-century media marketplace. In Nexstar's view, that concern is far better addressed with a simple, easily-administrated relaxation of the Local TV Ownership Rule than by resource-consuming case-by-case evaluation of individual waiver requests.

agreements to "circumvent" the Commission's rules.[52] The Commission credits the "beliefs" and "contentions" of these groups and seeks comment on whether it should make such agreements attributable under its rules, notwithstanding its long history of non-attribution for these types of arrangements.[53]

Nexstar provides services to 17 full-power television stations through Local Service Agreements with the owners of these stations (Mission Broadcasting, Inc. and Sinclair Broadcast Group). These relationships enable Nexstar to provide actual evidence – not "belief," "supposition," or "conjecture" – of how Local Service Agreements benefit the communities in which it has such agreements. These relationships have allowed the involved stations to provide more local news to their communities, purchase Doppler weather radar equipment and electronic newsgathering vehicles, offer local non-profits greater exposure, and permit the stations to be more active community participants. Indeed, contrary to the public interest group claims, Nexstar's LSAs generally have increased news resources available to the stations; do not result in repurposed content; have expanded the quantity of available, diverse local news coverage; and fully comport with the Commission's rules.[54]

As established above, television broadcasters today are operating in a challenging and hyper-competitive environment and must operate as innovatively and efficiently as possible in

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[52] A number of multichannel video programming distributors also object to LSAs claiming these agreements provide local television broadcasters with "leverage" during retransmission consent negotiations. This complaint has been fully briefed in the Commission's retransmission consent proceeding (*see Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, FCC 11-31, rel. March 3, 2011) and Nexstar will not rehash those arguments here. Nexstar suggests that the retransmission consent proceeding is the correct place for the Commission to address any concerns regarding retransmission consent negotiations.

[53] NPRM at pp.81-82.

[54] The Commission previously and repeatedly has determined that Nexstar's Local Service Agreements do not confer influence over the station licensees with respect to programming or other core operating functions, and Nexstar does not understand how something the Commission has fully reviewed and approved can be said to "circumvent" the Commission's rules.

order to provide their communities with local news and programming. Producing high quality local TV news is expensive and the advertising base in most small and mid-sized markets cannot support four stand-alone television news operations. Producing local news requires a substantial upfront capital investment in news trucks, cameras, equipment, and a news set, as well as the hiring of reporters, anchormen, camera operators, producers, and news directors. According to a 2010 study by the National Association of Broadcasters, the average news operating budget in medium and small markets is $1.8 million.[55] Given limited advertising revenue and the steep expense of a local news operation, the only way for many broadcasters (even top-four network affiliates) in today's medium and small markets to provide local news is through a sharing arrangement with another in-market station. This is fact, no matter how much the public interest groups with their ivory tower theories and studies would prefer to ignore economic reality.

Local Service Agreements permit television stations to produce tangible public interest benefits that otherwise would not be available to local residents in their markets. A few highlights of the benefits of Nexstar's LSAs include:[56]

- Monroe, Louisiana (DMA 137) – the LSA has enabled the existing news staff on Mission's KTVE-TV to introduce morning news on Nexstar's KARD from 7:00-8:00 a.m. and evening news from 9:00-9:30 p.m. Monday through Friday, providing an additional 7.5 hours of local news in the market per week. (The news broadcasts on KTVE-TV and KARD have different formats as well as a different feel, with the 9:00 p.m. newscasts much faster paced with a heavier focus on local weather.) Without the LSA, the KTVE-TV investigative news unit would be unable to do the reporting it does and the stations would not have *two* live trucks available for remote reporting. The stations also would not be able to offer the public affairs programming (debates and fundraisers) that they are currently able to support. Nexstar also upgraded the stations' news sets in 2011.

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55 National Association of Broadcasters, GN Docket No. 10-25, Attachment B, The Economic Realities of Local Television News, at p. 13. Nexstar has calculated that it costs an average of $1.5 million to produce local news in its LSA markets. *See* Appendix A hereto.

56 Information regarding the benefits of Nexstar's LSAs not set forth here may be found in Appendix A hereto.

- Joplin, Missouri (DMA 149) – this LSA allows the production of 19.5 hours of local news on KSNF and 14 hours of local news on KODE-TV, with both stations also able to produce different shows with local sports coaches. Each station's newscasts have their own separate and distinct identities. In addition, when the KSNF tower came down in 2009, Nexstar was able to leverage the insurance funds to build two state-of-the-art news sets in its building, as well as prepare both stations for eventual HD news broadcasts.[57] Of further critical import, the cost savings generated through the LSA allowed Nexstar to purchase a Doppler weather radar system which was instrumental in saving lives on May 22, 2011 when an EF-5 tornado tore through much of Joplin with destructive and deadly force. The LSA also was critical to KSNF's and KODE-TV's immediate post tornado coverage because, through the simulcast of the continuous news coverage on both stations, the stations were able to use their combined resources to cover much more of the damaged area providing much needed information to the community. In addition, because the control rooms for both stations are identical, the limited production staff that was at, or able to make it into, the stations were able to keep both stations on the air through the night.

- Peoria, Illinois (DMA 116) – the LSA has allowed the introduction of local newscasts on Sinclair's Fox-affiliated WYZZ-TV. Contrary to the public interest group complaints, each station has different anchors, on-air graphics, music and feel. The 9:00 p.m. newscasts on WYZZ-TV provide news and information to the community in a time period that is not otherwise available to viewers due to the prime-time network programming on the ABC, NBC and CBS stations at that time. The LSA also permitted the investment in additional ENG equipment for the stations.

- Erie, Pennsylvania (DMA 146) – this LSA allows for 12 hours of news programming on a Fox-affiliated station, with local newscasts at 8:00 a.m. and 10:00 p.m. Monday through Friday and 10:00 p.m. on Saturday and Sunday. The 10:00 p.m. newscasts allow viewers in a manufacturing-based market with shifts starting at 7:00 a.m. to watch the late local news while still getting to bed at a reasonable hour. WFXP's morning newscasts allow stay-at-home parents to watch the news after their children have left for school and third shift workers to watch a live newscast before "retiring for the night." The stations also were able to upgrade their news sets and weather equipment in 2011.

- Evansville, Indiana (DMA 104) – On December 1, 2011, Nexstar and Mission initiated a Local Service Agreement between WEHT and WTVW. WEHT will continue to provide 24 hours per week of local news, while WTVW will continue to provide 27.5 hours of local programming. With the more than $500,000 in savings from the combination of facilities, management staff and shared equipment, in 2012 the stations are upgrading the weather system to improve the Doppler weather radar (which will now be available to both stations and not just WEHT); upgrading both stations' newscasts to HD; and are able to provide expanded breaking news and regional sports coverage because both stations now have access to a satellite truck. The new combined platform also expands

[57] Contrary to the public interest group theorists, the stations are able to cover more news stories, and "repurpose" news on both stations using unique talent to tell the story in a different way to support each station's unique brand.

the reach for local organizations as they now have access to more viewers by leveraging both stations.

- Utica, New York (DMA 172) – In a DMA with an estimated revenue base of less than $13 million, with a dominant station that earns nearly 65% of the markets revenues,[58] Nexstar invested more than $900,000 to launch 7.5 hours of local news per week (5 on Mission's WUTR (ABC) and 2.5 on Nexstar's WFXV (FOX)) in September 2011. Nexstar anticipates that it will cost at least $750,000 to sustain the 390 plus hours of local news on these stations in 2012.

Without Local Service Agreements, Nexstar's partners would have to expend millions of dollars to establish the infrastructure (purchasing equipment and hiring personnel) to produce local news. These expenses, in the medium and small markets in which Nexstar operates, are of a magnitude that these stations would simply be unable to provide local news absent the efficiencies that LSAs make possible.[59] The loss of the arrangements would also negatively impact Nexstar's stations resulting in less resources available to Nexstar for investment in high definition news sets and production equipment, less time available for local sports programming (due to the inability to split the broadcasts across two stations to comply with network requirements), and potentially a reduction in its news hours as well. Without these types of relationships, many small market stations will be unable to support any type of local news production, let alone any other local programming. Thus, the Commission should ignore the unsupported, speculative assertions that these relationships somehow "circumvent" the Commission's rules and decline to make Local Service Agreements attributable under its rules.

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[58] *Investing in Television Market Report 2011 Fourth Edition,* BIA/Kelsey, DMA 172.

[59] In 2011, Mission paid Nexstar approximately $7.2 million not only for producing more than 7,400 hours of local news on 12 of its stations, but also for engineering, accounting and other back office administrative assistance provided under the parties' shared services agreements. Without the LSA, Mission would have been able to produce local news only on three or maybe four of its stations, thereby leaving 8 of the 12 markets that currently receive newscasts from a Mission station without that source for local news.

APPENDIX A

Nexstar-Mission News Hours/Production Costs

Market/DMA Number	Nexstar Station/ Affiliation	Number of News Hours/Week	Mission Station/ Affiliation	Number of News Hours/Week	2011Combined News Production Costs (excluding capital expenditures)
Wilkes-Barre-Scranton (DMA 54)	WBRE-TV ABC	31 (includes PA Live lifestyle focused news program)	WYOU CBS	0[1]	$3,000,000
Springfield, MO (DMA 75)	KOZL-TV Independent	23(includes Ozarks Live lifestyle focused news program)	KOLR CBS	22	$1,900,000
Evansville (DMA 104)	WEHT ABC	24	WTVW Independent	23.5	$2,800,000
Amarillo (DMA 130)	KAMR-TV NBC	18.5	KCIT FOX	6	$1,000,000
Rockford (DMA 134)	WQRF-TV FOX	6	WTVO ABC	19.5	$1,200,000
Monroe-El Dorado (DMA 137)	KARD FOX	7.5	KTVE-TV NBC	19.5	$1,100,000
Wichita Falls – Lawton (DMA 142)	KFDX-TV NBC	22.5	KJTL FOX	2.5	$1,200,000
Lubbock (DMA 143)	KLBK-TV CBS	16.5	KAMC ABC	16.5	$2,900,000
Erie (DMA 146)	WJET-TV ABC	22	WFXP FOX	12	$1,300,000

[1] Mission broadcast local news on WYOU until April 2009. Despite working for more than 10 years to make local news on WYOU profitable, Nexstar ceased producing local news programming for WYOU under the parties' shared services agreement because Nexstar's costs for producing the news for WYOU far exceeded the revenues Nexstar could bring in for advertising during and adjacent to the newscasts. When Nexstar launches high definition news on WBRE-TV in April 2012, it intends to re-launch 30 minute high definition newscasts on WYOU at 12:00 p.m. and 7:00 p.m. Nexstar notes that it also has a news-only services agreement pursuant to which Nexstar produces 7 hours per week of local news for WOLF-TV (FOX).

Market/DMA Number	**Nexstar Station/ Affiliation**	**Number of News Hours/Week**	**Mission Station/ Affiliation**	**Number of News Hours/Week**	**2011Combined News Production Costs (excluding capital expenditures)**
Joplin-Pittsburg (DMA 149)	KSNF NBC	19.5	KODE-TV ABC	14	$1,400,000
Terre Haute (DMA 154)	WTWO NBC	14.5	WAWV-TV ABC	5	$1,100,000
Abilene-Sweetwater (DMA 164)	KTAB-TV CBS	19	KRBC-TV NBC	16.5	$1,000,000
Billings (DMA 168)	KSVI ABC	0[2]	KHMT FOX	0	$0
Utica (DMA 172)	WFXV FOX	2.5	WUTR ABC	5	$215,000 for 4 months ($750,000 budgeted for 2012)
San Angelo (DMA 197)	KLST CBS	19	KSAN-TV NBC	9	$760,000

Market/DMA Number	**Nexstar Station/ Affiliation**	**Number of News Hours/Week**	**Sinclair Station/ Affiliation**	**Number of News Hours/Week**	**2011Combined News Production Costs (excluding capital expenditures)**
Rochester (DMA 79)	WROC-TV CBS	27	WUHF FOX	7	$2,000,000
Peoria (DMA 116)	WMBD-TV CBS	27	WYZZ-TV FOX	5	$1,300,000

2 The Billings DMA has two television stations (KTVQ and KLUR-TV) that collectively earn 80% of the market revenues leaving less $3,000,000 in revenues split among KSVI and KHMT, making any type of news production on these stations infeasible.

LSA Benefits

In All Markets – In addition to the above local news hours which are supported under the LSAs, combining back room operations (accounting, engineering) creates the "excess" funds to produce more news and local programming and invest in upgrading production equipment. Community ascertainment is more expansive covering more input groups. Public service projects/community non-profits benefit from greater exposure due to the promotion on two stations which in general allows the supported organizations to achieve greater returns. The stations are able to bring more local sports programming to the community by splitting the broadcast of such programming over two stations (in order to comply with the network requirements in the stations' affiliation agreements) and/or cover more local events, such as marathons, parades and festivals.

Wilkes-Barre-Scranton (DMA 54) – Nexstar produces and broadcasts *Newsmakers*, a monthly news-oriented public affairs program that is broadcast three times each month on WBRE-TV and once a month on WYOU. Nexstar is making the capital investment in 2012 necessary to launch its local programming in high definition, and will again be launching local news on WYOU.

Springfield, Missouri (DMA 75) – Nexstar previously was able to purchase a satellite production truck that allows both stations to produce remote local programming from the 31 counties in the DMA. In 2011, Nexstar was able to invest more than $600,000 to bring high definition local programming to its stations.

Rochester (DMA 79) – The LSA savings have resulted in the broadcast of 7 hours of local news programming on Sinclair's WUHF while allowing WROC-TV to expand its investigative journalism resources.

Amarillo (DMA 130) – On a station that earns less than $1 million in revenues from its local news, KCIT is able to broadcast six hours of local news per week because of the LSA. Both KCIT and KAMR-TV also are able to cover more local sports information including, during the season, extensive local high school football coverage.

Rockford (DMA 134) – Nexstar is launching an additional two hours of local programming on WQRF-TV in 2012 that would not be possible without the efficiencies achieved through the LSA.

Wichita Falls-Lawton (DMA 142) – In addition to the news broadcasts on KFDX-TV and KJTL, Nexstar also broadcasts a daily program called *RFD-3 with Joe Brown* (a local farm and ranch report) Monday through Friday and a half-hour sports program after KFDX-TV's Sunday late news. During football season KFDX-TV broadcasts a weekly half-hour program dedicated to local high school sports. The stations are also able to dedicate staff and time to follow the Dallas Cowboys through training camp and preseason.

Lubbock (DMA 143) – Both stations have access to the Doppler weather radar system and satellite truck, which were purchased through the savings generated from the LSA efficiencies. The stations also were able to upgrade the newsroom to a tapeless system that streamlines the editing process.

Terre Haute (DMA 154) –Mission's WAWV-TV broadcasts a weekly business news focused program, *Valley Business Weekly,* which is rebroadcast on Sunday night and, during basketball season, broadcasts a weekly 30 minute coaches program called *Inside Sycamore Basketball.* The LSA also permits the stations to produce one Indiana State football game, Indiana State basketball games and a local high school basketball tournament because the stations are able to shift the programming between themselves in order to ensure both stations are in full compliance with their network affiliation obligations.

Abilene-Sweetwater (DMA 164) – this LSA was critical to the survival of KRBC-TV in 2007 when the KRBC-TV tower collapsed from ice. The LSA allowed for the construction of a new digital transmitter building at the KTAB-TV tower site and installation of the KRBC-TV digital antenna on the KTAB-TV tower less than five months after the Commission granted KRBC-TV a construction permit to relocate its digital facilities to the KTAB-TV antenna site. On a stand-alone basis, even with insurance proceeds, Mission would not have had the capital necessary to rebuild a tower and purchase all new digital equipment, let alone have the station back broadcasting that quickly. The LSA permits the stations, with combined revenues of less than $7 million, to produce 35.5 hours of news and other local programming a week, while still being able to make needed capital investments and equipment repairs.

Billings (DMA 168) – Due to two dominant in-market stations, Nexstar's KSVI and Mission's KHMT earn a combined revenue of less than $3 million. This LSA quite simply ensures the survival of both stations giving this small market a full complement of big 4 network affiliated stations, while allowing the community to benefit from the expanded reach these two stations provide to organizations such as the Special Olympics, local theaters, Relay for Life and Habitat for Humanity, among others.

San Angelo (DMA 197) – In a market with $7 million in total revenues, the LSA permits these two stations to broadcast 30 hours of local programming per week, plus local programming specials throughout the year. The stations also are able to leverage the LSA cost savings giving both stations the ability to purchase more popular syndicated programming for the market. In addition, the LSA ensures that the stations can make capital investments in the stations as needed, while still remaining active in sponsoring and participating in community events, like the San Angelo Stock Show and Rodeo.

competitive, compelling programming available as that is what will maximize the revenues of both stations.

➢ *The Licensee Outsources its Retransmission Consent Negotiations*: UCC here adopts the arguments of the MVPDs and their claims of harm to consumers (or more specifically, to the MVPDs). Joint negotiations do not affect control or otherwise provide a station with undue influence – they do not affect a licensee's programming decisions, personnel decisions (hiring, firing and compensation) or give financial control to the negotiating station.

Accordingly, it remains sufficient for the Commission to examine whether a LSA gives another station or party control over a station's programming, personnel or finances under the Commission's already existing "control" precedents. If it does not, the LSA should not be deemed attributable.

B. Local Service Agreements Serve the Public Interest.

Ignoring all evidence that directly contradicts their long-held antagonistic views of LSAs, both Free Press and CWA take aim at Nexstar's operations under its LSA agreements. Free Press claims that Nexstar's and Mission's joint decision to terminate newscasts on Mission's WYOU in Scranton, Pennsylvania was a "plain, old-fashioned layoff."[36] This simplistic contention ignores the years of history behind Nexstar's and Mission's decision, as well as market reality, both of which Free Press is fully aware (having cited to Nexstar's comments that fully explain the parties' decision). However, Nexstar hereby re-explains for Free Press's benefit: WNEP-TV, owned by Local TV, has been for many years the market leader, is among the top-rated stations nationally in terms of local news and earns approximate 43% of the Wilkes-Barre-Scranton market's total revenues.[37] From 1997 until 2007, Nexstar and Mission worked diligently but unsuccessfully to provide an economically sustainable traditional newscast

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36 *Comments of Free Press* at p. 54.

37 *See WNEP newscasts get top national ratings*, Andrew M. Seder, Times Leader, January 25, 2012, available at http://www.timesleader.com/business/WNEP_newscasts_get_top_national_ratings_01-25-2012.html (last visited Mar. 2, 2012); *Investing In Television Market Report 2011, 4th Edition*, BIA/Kelsey 2011, DMA 54 ("BIA Kelsey").

on WYOU. Having failed to make inroads against WNEP, Nexstar and Mission spent two years providing an innovative interactive newscast on WYOU, which also failed to achieve economic sustainability. After trying for more than 12 years to produce a profitable newscast for WYOU, because the costs for producing the news for WYOU far exceeded the revenues brought in for advertising during and adjacent to the newscasts, the parties agreed to terminate this never-profitable news operation. Thus, Free Press's description as a "plain, old-fashioned layoff" could not be further from the truth.

CWA, for its part, funded a study pursuant to which Professor Yanich at the University of Delaware reviewed a "constructed week" of one daily newscast for each station in eight markets, including the Wichita Falls, TX-Lawton, OK market and the Peoria-Bloomington, IL market where Nexstar has LSA agreements with Mission and Sinclair respectively.[38] As the National Association of Broadcasters amply demonstrates in its comments, this study has serious and significant shortcomings, and cannot be used as support (generalized or otherwise) to determine whether LSAs are (or are not) in the public interest.[39] Nonetheless, because this study focuses on two of Nexstar's LSA arrangements, Nexstar provides the following information for the Commission's consideration:

Wichita Falls-Lawton: Wichita Falls-Lawton is DMA 142 and had total market revenues of approximately $18 million in 2010.[40] KJTL, owned by Mission, is the weakest station in the market in terms of revenues and ratings. Nexstar and Mission implemented their LSA relationship in 1998. Prior to implementation of the LSA, pursuant to which Nexstar

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[38] *Comments of CWA* at fn. 10 (*Local TV News & Service Agreements: A Critical Look*, Dr. Danilo Yanich, Center for Community Research & Service, University of Delaware, Oct. 2011).

[39] *Comments of NAB* at pp. 60-66.

[40] BIA/Kelsey, DMA 142.

produces the news for its station KFDX-TV and Mission's station KJTL, KFDX-TV broadcast 17 hours of local news and KJTL broadcast no local news. Today, without Mission having had to invest more than $1 million to purchase all of the equipment necessary to build a stand-alone news operation, Nexstar produces 22.5 hours of local news per week on KFDX-TV and 2.5 hours of local news per week on KJTL. Thus, regardless of the findings of the Yanich study, the Wichita Falls market has experienced an addition of 8 hours of local news programming that did not exist prior to the LSA, with the 2.5 hours broadcast on KJTL made feasible solely because of the LSA. That is, without the LSA, due to the high initial investment costs and high annual costs associated with producing local news, the 2.5 hours of news per week of local news on KJTL would be unsustainable.

Peoria-Bloomington: Peoria-Bloomington is DMA 116 and had total market revenues of approximately $33.5 million in 2010.[41] WYZZ-TV is the weakest station in the market in terms of revenues and ratings, and there is a dominant in-market station which receives more than 50% of the market revenues. Nexstar and Sinclair implemented their LSA relationship in 2001. Prior to implementation of the LSA, pursuant to which Nexstar produces the news for its station WMBD-TV and Sinclair's station WYZZ-TV, WMDB-TV broadcast 20 hours of local news per week and WYZZ-TV broadcast no local news. Today, without Sinclair having had to invest more than $1 million to purchase all of the equipment necessary to build a stand-alone news operation, Nexstar produces 27 hours of local news per week for broadcast on WMBD-TV and 5 hours of local news per week for broadcast on WYZZ-TV. Thus, regardless of the findings of the Yanich study, the Peoria market has experienced an addition of 12 hours of local news programming that did not exist prior to the LSA, with the 5 hours per week broadcast on

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[41] BIA/Kelsey, DMA 116.

WYZZ-TV made feasible solely because of the LSA. That is, without the LSA, due to the high initial investment costs and high annual costs associated with producing local news and the presence of a dominant in-market station, the 5 hours of news per week of local news on WYZZ-TV would be unsustainable.

Although not studied by Dr. Yanich, Nexstar notes that in all but the Wilkes-Barre-Scranton and Lubbock, TX markets, in those markets where Nexstar has implemented an LSA, the LSA operations have either increased the amount of local news provided in the market (10 markets) or maintained the same level of local news (4 markets) in the face of ever increasing competition. Thus, notwithstanding the revenue declines that television broadcasters continue to experience, LSAs have enabled Nexstar and its LSA partners to maintain or expand the same commitment to news and local programming that existed at the time the stations entered into the LSAs. Further, due to the increasingly competitive media landscape, without these sharing arrangements, one or both LSA partner stations likely would have reduced or cancelled their local news. Accordingly, LSAs serve the public interest.

IV. RETRANSMISSION CONSENT MATTERS SHOULD BE ADDRESSED IN THE RETRANSMISSION CONSENT PROCEEDING.

Notwithstanding the existence of an entire proceeding dedicated to the question of retransmission consent "reform," American Cable Association, Time Warner Cable, Inc., Mediacom Communications Corp., Cequal Communications (d/b/a Suddenlink Communications), DirecTV and other MVPDs filed comments in this proceeding to once again proclaim their purportedly disadvantaged status and to declare that the Commission must (i) continue to prohibit duopolies, (ii) deem LSAs anticompetitive and attributable, and (iii) contrary to several other commenters' position, determine that multicasting is anticompetitive. All of